



INITIAL STATEMENT OF REASONS SECONDARY CONTAINMENT REGULATIONS

**Department of Toxic Substances Control Reference Number: R-98-21
Office of Administrative Law Notice File Number: Z-06-0509-07**

PROBLEM, REQUIREMENT OR OTHER CONDITION ADDRESSED

In this rulemaking, the Department of Toxic Substances Control (DTSC) is proposing changes to the rules for the use of tanks, tank systems, and containers. There are several reasons why this regulation is needed:

Outdated, complex and unclear requirements and deadlines:

- Current regulations impose outdated and unclear requirements for integrity assessment and secondary containment for tanks and tank systems at permitted and interim status facilities as well as for generators. Also, current regulations impose complex and unclear requirements for tank systems which may become hazardous waste tank systems. It is necessary to establish separate and simple deadlines for facilities managing newly identified hazardous wastes so they are able to comply with applicable integrity assessment and secondary containment regulations.

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS:

The current regulations for tanks and tank systems closely mirror the provisions of Title 40 of the Code of Federal Regulations on the same subject. However, the proposed regulations delete outdated deadlines and clarify requirements for secondary containments.

STUDIES RELIED ON: None

ALTERNATIVES CONSIDERED:

The following alternatives are discussed below:

1. Recommended Alternative: Make the following changes to the regulations:

Delete outdated deadlines and clarify requirements for secondary containment for various tanks and tank systems including future hazardous waste tank systems:

Pro: Greatly simplifies the applicability and the deadlines of the regulations. This will improve both the ability of the regulated community to comply and the inspecting agencies to assess

compliance.

Con: No cons identified.

2. Do nothing: This alternative would not address the issues identified at the beginning of this document.

Pro: None.

Con: Ambiguity in deadlines and applicability would continue.

DETAILED STATEMENT OF REASONS:

All citations are to provisions of Title 22, California Code of Regulations, Division 4.5 unless otherwise noted.

Chapter 14 Rules: Both the federal and state hazardous waste control laws contain two sets of technical standards - one for fully permitted facilities (Chapter 14) and one for interim status facilities (Chapter 15). Note that many of the technical standards in chapter 15 for interim status facilities also apply to generators through section 66262.34. The changes being made to the Chapter 14 permitted facilities standards are discussed immediately below. Changes to Chapter 15 follow the Chapter 14 discussion.

Section 66264.191: This section requires assessment of existing tanks lacking secondary containment at permitted hazardous waste facilities. It parallels title 40 CFR, section 264.191 and was adopted to meet the legislative mandate of Health and Safety Code section 25159.5, which requires DTSC to adopt regulations necessary to obtain and maintain Resource Conservation Recovery Act (RCRA) authorization. This section is being modified by removal of deadlines which are complex and confusing and references dates that have already passed. The following changes to the deadlines are proposed:

Delete a phrase in subsection (b): “. . . by the dates indicated below:” is proposed for deletion. The deletion of the above phrase is necessary because the dates indicated below in the subsection have already passed. Removal of these past dates improves the clarity of the regulations by eliminating unnecessary verbiage and confusing references. This change is non-substantive.

Delete subsections (b)(1), (b)(1)(A), (b)(1)(B), (b)(2), (b)(2)(A), (b)(2)(B), (b)(2)(B)1., and

(b)(2)(B)2. : These existing subsections establish the dates by which integrity assessment must be performed for tank systems without secondary containment. All the dates established by these rules have already passed; thus, these subsections are no longer necessary. The clarity of the regulations is improved by their deletion. This change is non-substantive.

Delete a phrase in subsection (d): This subsection requires that the owner or operator of tank systems without secondary containment, but with newly identified hazardous waste (subsequent to dates identified in (d)(1) and (d)(2)), perform an integrity assessment within 12 months from the date the waste becomes a hazardous waste. Since the indicated dates in (d)(1) and (d)(2) have already passed, the proposed regulations enhance clarity by deleting unnecessary language. This change is non-substantive.

Delete subsections (d)(1), (d)(1)(A), (d)(1)(B), (d)(2), (d)(2)(A), (d)(2)(B), (d)(2)(B)1., and (d)(2)(B)2.: These subsections establish baseline dates by which tank systems without secondary containment must have integrity assessments. The assessments must be done within 12 months from the date tank systems that transfer, store or treat materials that become hazardous wastes. All the dates established by these rules have already passed and are no longer necessary. This change is non-substantive.

Section 66264.193: This section establishes requirements for secondary containment for tank systems at permitted facilities and provides several deadlines for permitted facilities to come into compliance. The deadlines applicable to specific tank systems are outdated and unclear. To improve clarity, complex and repetitive text describing expired dates is being deleted, while simpler text is substituted for current deadlines.

Delete a phrase and amend subsection (a)(2): This subsection apply the requirements to provide secondary containment (found in subsection (a)) to existing tank systems managing specified dioxin-containing wastes. Under the proposed regulations, the application of the secondary containment rule in (a)(2) would be extended to all tank systems at permitted facilities with two exceptions found in proposed (a)(3) and (a)(4) (existing (a)(6)). Therefore, the proposed regulations delete the phrase that relates to dioxin-containing wastes. This change is non-substantive.

Delete subsections (a)(2)(A), (a)(2)(A)1., (a)(2)(A)2., (a)(2)(B), (a)(2)(B)1., and (a)(2)(B)2.: These subordinate subsections set forth dates for obtaining this secondary containment based on regulatory status. The text of the subsections subordinate to (a)(2) can be deleted because all the tank systems holding the specified dioxin-containing wastes must now have secondary containment. This change is non-substantive.

Delete subsections (a)(3), (a)(3)(A), (a)(3)(A)1., (a)(3)(A)2, (a)(3)(B), a)(3)(B)1., (a)(3)(B)2., (a)(3)(B)2.a., and (a)(3)(B)2.b: These existing subsections establish deadlines for obtaining secondary containment for both RCRA and non-RCRA facilities when the age of the tank system is known and documented. Deadline for existing tank systems of known and documented age containing RCRA hazardous wastes since January 12, 1987 has passed. Also, deadline for tank systems containing non-RCRA hazardous wastes of known and documented age since July 1, 1991 will have passed by the time the proposed regulations are in place (the deadline is July 1, 2006). This change is non-substantive.

Delete subsections (a)(4)(A), (a)(4)(B), (a)(4)(B)1., and (a)(4)(B)2.: These subsections establish the deadlines for obtaining secondary containment for tank systems at RCRA facilities when the age of the tank system is not documented. It requires provision of secondary containment "within 8 years of January 12, 1987" (January 12, 1995) or, if the facility is more than 7 years old on January 12, 1987, within up to 8 years (January 12, 1995). Thus, this provision requires all facilities meeting its description to already have secondary containment. This requirement will be subsumed by the general statement in proposed subsection (a)(2). With all facilities subject to the secondary containment requirement, the text establishing these deadlines is no longer necessary. Additionally, because the deadlines have all passed, these subsections were deleted for clarity. This change is non-substantive.

Delete subsections (a)(5)(A), (a)(5)(B), (a)(5)(B)1., (a)(5)(B)2., (a)(5)(B)2.a., and (a)(5)(B)2.b.: These existing subsections establish deadlines for obtaining secondary containment for both RCRA and non-RCRA facilities when the age of the tank system is not known and documented. This requirement will be subsumed by the general statement in proposed subsection (a)(2). With all facilities subject to the secondary containment requirement, all the text establishing these deadlines is no longer necessary. Because the deadlines for all the facilities addressed by these subsections to provide secondary containment have passed, this deletion does not alter the duties of any regulated entity. This change is non-substantive.

Amend and renumber subsection (a)(6) and renumber (a)(6)(A): The proposed regulations make several changes to these provisions. First, the proposed regulations change the deadlines for providing secondary containment at the facilities managing newly identified hazardous waste. Because the facilities manage waste that was identified as hazardous after the deadlines in the existing regulations were written, they cannot be expected to comply with the dates set forth in this section. Therefore, two years has been chosen to allow the facilities ample time to complete the following

activities which are normally part of capital improvement projects such as building a secondary containment project:

- Internally allocating resources to the project
- Preparing specifications
- Requesting bids for design, construction, and installation
- Contracting for design, construction, and installation
- Physical installation

Secondly, the proposed regulations added a sentence at the end of subsection (a)(3) to clarify the exemption from secondary containment requirements pursuant to 40 CFR, section 265.201 for the owner or operator of Small Quantity Generators (SQGs) and Conditionally Exempt Small Quantity Generators (CESQGs).

Delete subsection (a)(6)(A), (a)(6)(A)1., (a)(6)(A)2., (a)(6)(B), (a)(6)(B)1., and (a)(6)(B)2.: these subsections state the exemption requirements of SQGs and CESQGs pursuant to 40 CFR, section 265.201. The aforementioned provisions are being deleted, because the new sentence at the end of subsection (a)(3) refers owner or operator of a SQGs and CESQGs in subsections (a)(3)(A) and (a)(3)(B). This change is non-substantive.

Renumber subsections (a)(6)(B)1.a, (a)(6)(B)2.b: To reflect the deletion of preceding subsection these subsections were renumbered as (a)(3)(A), (a)(3)(B). This change is non-substantive.

Chapter 15 Rules: Chapter 15 contains the technical standards for interim status facilities and generator operations. The tank systems requirements apply both to interim status facilities and, by incorporation in section 66262.34, to generators and onsite hazardous waste treatment facilities operating pursuant to Permit by Rule section 67450.1. These rules generally parallel the federal rules except:

- They do not assume issuance of a permit and permit conditions.
- They are implemented by the appropriate Certified Unified Program Agency (CUPA) or designated agency for generators and RCRA exempt onsite hazardous waste treatment facilities.

Section 66265.191: This section requires that the integrity of tank systems lacking secondary containment be assessed and sets forth deadlines and standards for the assessment. This section is being modified by removal of deadlines which are complex and confusing and which apply dates that have already passed.

Delete subsections (a)(1), (a)(1)(A), (a)(1)(B), (a)(2), (a)(2)(A), (a)(2)(B), (a)(2)(B)1., and (a)(2)(B)2.: These existing subsections establish the dates by which integrity assessment must be performed on tank systems without secondary containment. All the dates established by these rules have already passed. Thus, these subsections are no longer necessary and the clarity of the regulations is improved by their deletion. This change is non-substantive.

Amend subsections (c): This subsection requires that the owner or operator of tank systems without secondary containment, but with newly identified hazardous waste (subsequent to dates identified in (c)(1) and (c)(2)) in a tank system without secondary containment, perform an integrity assessment within 12 months from the date waste becomes a hazardous waste. Since the indicated dates in (c)(1) and (c)(2) have already passed, the proposed regulations enhance clarity by deleting unnecessary language. This change is non-substantive.

Delete subsection (c), (c)(1), (c)(1)(A), (c)(1)(B), (c)(2), (c)(2)(A), (c)(2)(B), (c)(2)(B)1., and (c)(2)(B)2.: These subsections establish baseline dates by which tank systems without secondary containment must have integrity assessments. The assessments must be done within 12 months from the date tank systems that transfer, store or treat materials become hazardous wastes. All the dates established by these rules have already passed, thus, they are no longer necessary. This change is non-substantive.

Section 66265.193: This section establishes requirements for secondary containment of tank systems at interim status facilities and provides several deadlines for interim status facilities to come into compliance. The deadlines applicable to specific tank systems are outdated and unclear. To improve clarity, complex and repetitive text describing expired dates deadlines is being deleted, while simpler text is substituted for current deadlines.

Amend subsection (a)(2): This subsection currently applies the requirement to provide secondary containment (found in subsection (a)) to existing tank systems managing specified dioxin-containing wastes. Under the proposed regulations, the application of the secondary containment rule in (a)(2) would be extended to all tank systems at permitted facilities with two exceptions found in proposed (a)(2)(A) and (a)(2)(B)

(existing (a)(2)(A)1. and (a)(2)(A)2.) and proposed (a)(3) (existing (a)(6)). Therefore, the proposed regulations delete the phrase that relates to dioxin-containing wastes. Also, the word “unless” was added to exclude secondary containment requirements for SQGs and CESQGs pursuant to 40 CFR 265.201. This change is non-substantive.

Delete subsections (a)(2)(A), (a)(2)(B), (a)(2)(B)1., and (a)(2)(B)2.: These subordinate subsections set forth dates for obtaining this secondary containment based on regulatory status. The text of the subsections subordinate to (a)(2) can be deleted because all the tank systems holding the specified dioxin-containing wastes must now have secondary containment. This change is non-substantive.

Delete subsections (a)(3), (a)(3)(A), (a)(3)(A)1., (a)(3)(A)2, (a)(3)(B), a)(3)(B)1., (a)(3)(B)2., (a)(3)(B)2.a., and (a)(3)(B)2.b.: These existing subsections establish deadlines for obtaining secondary containment for both RCRA and non-RCRA facilities when the age of the tank system is known and documented. Deadline for existing tank systems of known and documented age containing RCRA hazardous wastes since January 12, 1987 has passed. Also, deadline for tank systems containing non-RCRA hazardous wastes of known and documented age since July 1, 1991 will have passed by the time the proposed regulations are in place (the deadline is July 1, 2006). This change is non-substantive.

Delete subsections (a)(4)(A), (a)(4)(B), (a)(4)(B)1., and (a)(4)(B)2.: These subsections establish the deadlines for obtaining secondary containment for tank systems at RCRA facilities when the age of the tank system is not documented. They require provision of secondary containment “within 8 years of January 12, 1987” (January 12, 1995) or, if the facility is more than 7 years old on January 12, 1987, within up to 8 years (January 12, 1995). Thus, these provisions require all facilities meeting its description to already have secondary containment. This requirement will be subsumed by the general statement in proposed subsection (a)(2). With all facilities subject to the secondary containment requirement, the text establishing these deadlines is no longer necessary. Additionally, because the deadlines have all passed, these subsections were deleted for clarity. This change is non-substantive.

Delete subsections (a)(5)(A), (a)(5)(B), (a)(5)(B)1., (a)(5)(B)2., (a)(5)(B)2.a., and (a)(5)(B)2.b.: These existing subsections establish deadlines for obtaining secondary containment for both RCRA and non-RCRA facilities when the age of the tank system is not known and documented. This requirement will be subsumed the general statement in proposed subsection (a)(2). With all facilities subject to the secondary containment requirement, all the text establishing these deadlines is no longer necessary. Because the deadlines for all the facilities addressed by these subsections to provide secondary

containment have passed, this deletion does not alter the duties of any regulated entity. This change is non-substantive.

Amend and renumber subsection (a)(6) and renumber (a)(6)(A): The proposed regulations make several changes to these provisions. First, the provisions are renumbered as subsection (a)(3), (a)(3)(A).

Secondly, the proposed regulations change the deadlines for providing secondary containment at the facilities managing newly identified hazardous waste. Because the facilities manage waste that was identified as hazardous after the deadlines in the existing regulations were written, they cannot be expected to comply the dates set forth in this section. Therefore, two years has been chosen to allow the facilities ample time to complete the following activities which are normally part of capital improvement projects such as building a secondary containment project:

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Secondly, the proposed regulations added a sentence at the end of subsection (a)(3) to clarify the exemption from secondary containment requirements pursuant to 40 CFR, section 265.201 for the owner or operator of SQGs and CESQGs.

Delete subsection (a)(6)(A), (a)(6)(A)1., (a)(6)(A)2., (a)(6)(B), (a)(6)(B)1., and (a)(6)(B)2.: these subsections state the exemption requirements of SQGs and CESQGs pursuant to 40 CFR, section 265.201. The aforementioned provisions are being deleted, because the new sentence at the end of subsection (a)(3) refers owner or operator of a SQGs and CESQGs in subsections (a)(3)(A) and (a)(3)(B). This change is non-substantive.

Renumber subsections (a)(6)(B)1.a, (a)(6)(B)2.b: To reflect the deletion of preceding subsection these subsections were renumbered as (a)(3)(A), (a)(3)(B). This change is non-substantive.